Handbook on Liability to Pay in Certain Cases under GST

(October, 2026)

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi

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Foreword

The Goods and Services Tax (GST) law has established a comprehensive framework for determining the person liable to pay tax in respect of supplies made in the course or furtherance of business. While the primary liability to discharge GST generally rests upon the supplier, the law also provides for specific circumstances in which such liability may arise in respect of other persons, including recipients, agents, representatives, successors and persons associated with the business. A clear understanding of these provisions is essential to ensuring effective compliance and mitigating unintended tax exposures.

The Institute of Chartered Accountants of India (ICAI), through its GST & Indirect Taxes Committee, has consistently supported the implementation and evolution of the GST regime in India through constructive suggestions and inputs to the Government on various aspects of GST, along with its initiatives aimed at enhancing awareness and knowledge among stakeholders.

The Committee continues to disseminate knowledge and build professional capacity through technical publications, newsletters, e-learning initiatives, webinars, certificate courses, conferences, seminars and outreach programmes, while responding to the evolving needs of the GST regime and facilitating meaningful engagement among the profession, the Government and the wider stakeholder community.

I am pleased to acknowledge the Committee's continued commitment to advancing these initiatives and supporting the objectives of the GST ecosystem. The second edition of the publication *"Handbook on Liability to Pay in Certain Cases under GST"* is another endeavour of the Committee in furtherance of these objectives.

I appreciate the efforts of CA. Umesh Sharma, Chairman and CA. Rajendra Kumar P, Vice-Chairman of the Committee for their able leadership, guidance and dedicated efforts in **bringing out this revised edition.**

I am confident that this publication will serve as a valuable reference for professionals and other stakeholders in understanding the provisions relating

to liability to pay tax under GST and in determining and discharging tax liabilities in various circumstances under the GST regime.

CA. Prasanna Kumar D
President, ICAI

Date: 14.10.2026

Place: New Delhi

Preface

The determination of the person responsible for payment of tax is an important aspect of the GST framework, particularly in circumstances where the liability does not follow the usual course of taxation. The practical application of the relevant provisions often requires careful consideration of the nature of the transaction, the status of the persons involved and the circumstances giving rise to the liability. With the increasing number of business restructurings, transfers, successions and other changes in the legal and commercial structure of businesses, a clear understanding of these provisions has become essential for professionals as well as other stakeholders.

With a view to facilitating a better understanding of these provisions, the GST & Indirect Taxes Committee of the ICAI is pleased to bring out the updated Second Edition of the "Handbook on Liability to Pay in Certain Cases under GST." The present edition examines Sections 85 to 94 of the CGST Act from multiple perspectives. In addition to providing the relevant statutory provisions, it analyses their scope, applicability, interrelationship with other provisions of the GST law as also other relevant laws, including the practical issues arising therefrom. The Handbook endeavours to present these provisions in a structured and reader-friendly manner and assisting readers in appreciating the circumstances in which liability may arise and the persons who may be made liable. This edition is updated upto 30th September, 2026.

We sincerely thank CA. Prasanna Kumar D, President, ICAI and CA. Mangesh Kinare, Vice-President, ICAI for their continued encouragement, valuable guidance and unstinting support extended for all the ventures of the Committee. The Committee also acknowledges the efforts of CA. Tanya Pandey, Project Associate, in updating the publication and CA. Satish Saraf in meticulously reviewing the publication.

We hope that the publication will prove useful in the professional endeavours of the readers and contribute towards informed decision-making and effective compliance under the GST regime.

Every effort has been made to ensure the accuracy of the contents of this publication in accordance with the legal position prevailing at the time of its preparation. However, readers may appreciate that differing views may arise on certain issues. Any feedback, suggestions or instances of inadvertent errors

or omissions may kindly be shared at gst@icai.in. Readers are also encouraged to visit https://idtc.icai.org for access to a wide range of technical and educational resources on GST.

CA. Umesh Sharma
Chairman
GST & Indirect Taxes Committee

CA. Rajendra Kumar P
Vice-Chairman
GST & Indirect Taxes Committee

Date: 14.10.2026

Place: New Delhi

Foreword to the First Edition

The introduction of Goods & Services Tax (GST) in India is one of the most significant indirect tax reforms since Independence. The reform that took more than a decade of mutual co-operation, continuous discussion and intense debate between Central and State Governments about implementation methodology, was finally implemented with effect from 1st July 2017, subsuming almost all indirect taxes at the Central and State levels. As the journey of GST implementation progressed in India, the authorities have been quick to address the various challenges faced by the Industry and public concerns by issuing a series of notifications, clarifications, press releases and FAQs, to resolve a wide range of concerns.

The GST along with its challenges have brought in various benefits also like creation of National market by bringing down fiscal barriers amongst the States and has mitigated the cascading effect of taxes by allowing seamless credit of input tax across goods and services.

The Institute of Chartered Accountants of India (ICAI) through its GST & Indirect Taxes Committee has been playing a vital role in the implementation of GST in India by providing suggestions to the Government at each stage of development of GST. Further, the Institute has been playing proactive role and is a catalyst in dissemination of knowledge and awareness through technical publications, newsletters, e-learning and organizing various programmes, certificate courses, webcasts etc. for all stakeholders.

I am happy to note that the GST & Indirect Taxes Committee of ICAI has now taken the initiative to issue a series of Handbooks covering various procedural aspects of GST and in that series is bringing out this **Handbook on Liability to Pay in Certain Cases under GST** with an objective to provide guidance to the readers on this subject matter. The Handbook explains the concepts / procedures relating to liability to pay in certain cases under GST in an easy to understand lucid language and is aimed at updating the knowledge base of members in a simple and concise manner.

I congratulate CA. Rajendra Kumar P, Chairman, CA. Sushil Kumar Goyal, Vice-Chairman and other members of GST & Indirect Taxes Committee for coming out with this Handbook and for taking active steps in providing regular guidance to the members and other stakeholders at large.

I am sure that Members will find this publication very useful in discharging the statutory functions and responsibilities under the GST laws in an efficient and effective manner.

Place: New Delhi
Date: 10th November, 2020

CA. Atul Kumar Gupta
President, ICAI

Preface to the First Edition

Goods and Services Tax (GST) was introduced in India from 1st July, 2017. It is one of the major tax reforms since Independence in the area of indirect taxation. It was introduced with the objective to mitigate the cascading effect of taxes by allowing seamless credit across goods and services, facilitate free flow of goods and services across India and boosting tax revenue from better compliance and widening the tax base. A remarkable feature of GST implementation is that all the States in India came together with the Centre to form a unique federal body called GST Council, which is entrusted with the objective of recommending policies and procedural matters in the formation and implementation of GST legislation. The spirit of co-operative federalism took deep roots thereby ensuring that large federal countries like India implement the GST Law.

In order to facilitate understanding of the various compliances under GST, the GST & Indirect Taxes Committee of ICAI has taken an initiative to prepare a handbook on procedural aspects like registration, refund, return, invoice etc. One of the results of such initiative is this **Handbook on Liability to Pay in Certain Cases under GST**. An attempt has been made here to cover all aspects related to liability to pay in certain cases at one place and is intended to give general guidance to all stakeholders and also help them in resolving issues they may face during the course of their compliances under the GST. This Handbook on Liability to Pay in Certain Cases under GST is comprehensive containing analysis of the entire provisions under the law including notifications, circulars or orders upto 31st October, 2020 issued by the Government from time to time along with FAQ's, MCQ's, Flowcharts, Diagrams, Illustrations etc. to make the reading and understanding easier.

We stand by the Government in our role as "Partners in GST Knowledge Dissemination" and have always been supporting the Government with our intellectual resources, expertise and efforts to make GST error-free.

We sincerely thank CA. Atul Kumar Gupta, President and CA. Nihar Niranjan Jambusaria, Vice-President, ICAI for their encouragement to the initiatives of the GST & Indirect Taxes Committee. We express our gratitude for the untiring effort of CA. Gaurav Gupta who has shared her intellectual expertise and CA.

Purushothaman J for reviewing this publication. We place on record the services and unstinted support provided by the Secretariat of the Committee.

We record here the dedicated and devoted work done by the Secretary of the Committee, CA. Sharad Singhal who passed away at a very young age of 36 on 26th September 2020. The World of GST in general and our Committee in particular will miss his intellectual expertise. The Will of the Almighty prevails over everything and all of us have to accept HIS decision with a bow.

We trust this Handbook will be of practical use to all the members of the Institute and other stakeholders. We also welcome suggestions at gst@icai.in and request you to visit our website https://idtc.icai.org and provide valuable inputs in our journey to make GST truly a good and simple tax.

CA. Rajendra Kumar P
Chairman
GST & Indirect Taxes Committee

CA. Sushil Kumar Goyal
Vice- Chairman
GST & Indirect Taxes Committee

Place: New Delhi
Date: 10th November, 2020

Contents

1. INTRODUCTION 1
   - 1.1 Concept of Statutory and Vicarious Liability under Chapter XVI 2
   - 1.2 Nature of Liability under Chapter XVI 3
   - 1.3 Distinction from Ordinary Tax Liability 3
   - 1.4 Purpose of Chapter XVI 4
2. LIABILITY IN CASE OF TRANSFER OF BUSINESS (SECTION 85) ... 5
   - 2.1 Statutory Provision 5
   - 2.2 Analysis 5
   - 2.3 Examples of transfer of business and liabilities therein 14
   - 2.4 Significant Judicial Pronouncement 14
3. LIABILITY OF AGENT AND PRINCIPAL (SECTION 86) 15
   - 3.1 Statutory Provision 15
   - 3.2 Analysis 15
   - 3.3 Significant Judicial Pronouncement 21
4. LIABILITY IN CASE OF AMALGAMATION OR MERGER OF COMPANIES (SECTION 87) 22
   - 4.1 Statutory Provision 22
   - 4.2 Analysis 22
   - 4.3 Significant Judicial Pronouncements 26
5. LIABILITY IN CASE OF COMPANY IN LIQUIDATION (SECTION 88) 28
   - 5.1 Statutory Provision 28
   - 5.2 Analysis 29
   - 5.3 Significant Judicial Pronouncement 32
6. LIABILITY OF DIRECTORS OF PRIVATE COMPANY (SECTION 89) 33

6.1 Statutory Provision 33
6.2 Analysis 33
6.3 Significant Judicial Pronouncement 36
7. LIABILITY OF PARTNERS OF FIRM TO PAY TAX (SECTION 90) ... 36
7.1 Statutory Provision 36
7.2 Analysis 37
7.3 Examples 38
8. LIABILITY OF GUARDIANS, TRUSTEES, Etc., (SECTION 91) 38
8.1 Statutory Provision 38
8.2 Analysis 39
9. LIABILITY OF COURT OF WARDS, ETC (SECTION 92) 40
9.1 Statutory Provision 40
9.2 Analysis 40
10. SPECIAL PROVISIONS REGARDING LIABILITY TO PAY TAX, INTEREST OR PENALTY IN CERTAIN CASES (SECTION 93)..... 41
10.1 Statutory Provision 41
10.2 Analysis 42
10.3 Significant Judicial Pronouncements..... 45
11. LIABILITY IN OTHER CASES (SECTION 94) 49
11.1 Statutory Provision 49
11.2 Analysis 50
11.3 Significant Judicial Pronouncement 51
Statutory Mechanism for Proceeding Against Persons Liable under Chapter XVI..... 52

Liability to Pay in Certain Cases under GST

1. INTRODUCTION

India has adopted a dual GST model which means both Central and State Governments will levy tax under GST on every transaction which is a supply. Where any default is made in payment of any of these taxes, interest or penalty shall be imposed accordingly. Therefore, it is imperative to determine who is liable to pay the tax, interest or penalty. Usually, a supplier is liable to pay under forward charge. Generally, liability to pay tax is determined by the provisions of section 9 of Central Goods and Services Tax Act, 2017 (hereinafter referred as 'CGST Act') and Section 9 of respective State Goods & Services Tax Act, 2017 (hereinafter referred as 'SGST Act') and section 5 of Integrated Goods and Services Tax Act, 2017 (hereinafter referred as 'IGST Act'). These sections specify two kinds of mechanism to pay taxes i.e. forward charge and reverse charge. Under forward charge, the liability to pay taxes is on the supplier whereas under reverse charge the liability to pay taxes is on the recipient. Accordingly, the liability to pay interest or penalty arises on the person who is liable to pay taxes.

Why Chapter XVI exists and how liability is extended beyond the taxable person primarily liable for tax?

In certain situations, liability to pay taxes is not restricted to supplier or recipient merely, rather it is extended beyond them. Sections 85 to 94 of the CGST Act deal with certain cases where specific persons in certain cases are made liable to pay taxes, interest or penalty.

The GST framework is primarily founded on the principle that the person making a taxable supply is liable to discharge the tax payable thereon. However, in certain situations, the person primarily liable to pay tax may cease to exist, transfer the business, undergo a change in constitution, or may otherwise be unable to discharge the statutory liability. There may also be circumstances where, owing to the nature of the business or the legal relationship between persons, it becomes necessary to fasten liability upon another person associated with the taxable person or the business.

To address such situations and to safeguard the interests of revenue, **Chapter XVI of the CGST Act, 2017, comprising Sections 85 to 94, provides for "Liability to Pay in Certain Cases."** These provisions constitute a special

statutory framework under which liability for tax, interest and penalty may, in specified circumstances, extend to persons other than, or in addition to, the person who was originally liable to discharge the tax.

1.1 Concept of Statutory and Vicarious Liability under Chapter XVI

The provisions contained in Chapter XVI may broadly be understood in the context of statutory liability and vicarious liability.

Statutory liability refers to a liability created directly by the provisions of law. The liability of a person under Chapter XVI does not arise merely because of a private contract, commercial arrangement or relationship with the taxable person. Rather, it arises because the statute expressly identifies particular circumstances in which such person is liable for tax, interest or penalty.

The expression vicarious liability, in the context of Chapter XVI, signifies situations where the law fastens liability upon a person because of his or her statutory relationship with the taxable person, business, estate or transaction, even though such person may not have been the person who originally incurred the underlying tax liability. Such liability is therefore not a matter of general application, it operates only where the conditions prescribed under the relevant provision are satisfied.

Chapter XVI covers a variety of such circumstances. For instance, where a business is transferred, Section 85 provides for liability of the transferor and transferee in respect of specified tax, interest and penalty. Section 86 deals with the liability of an agent and principal in specified circumstances. Sections 87 and 88 address liability arising in cases of amalgamation or merger and liquidation of companies, respectively. Section 89 deals with the liability of directors of a private company, while Section 90 deals with the liability of partners of a firm. Sections 91 to 93 address specified circumstances involving guardians, trustees, agents, Court of Wards, receivers, managers and legal representatives of deceased taxable persons. Section 94 deals with liability in cases involving discontinuance, dissolution, partition or reconstitution of specified taxable persons.

Thus, the common thread running through these provisions is that the GST law identifies a particular legal or factual event and upon fulfilment of the statutory conditions, extends or preserves liability in respect of the tax dues associated with that event.

1.2 Nature of Liability under Chapter XVI

The liability under Chapter XVI should not be understood as creating an unrestricted or automatic liability upon every person connected with a taxable person. Each provision operates within its own statutory parameters and prescribes the circumstances, persons and extent of liability.

Accordingly, while examining whether a person can be made liable under Chapter XVI, it is necessary to determine:

- the event or circumstance which triggers the relevant provision;
- the person upon whom the statute fastens liability;
- the nature and extent of tax, interest or penalty covered by the provision;
- the period to which such liability relates;
- the conditions and statutory safeguards that must be satisfied before such liability can be enforced; and
- the manner in which such liability is to be determined and recovered under the GST law.

The liability may, depending upon the relevant provision, be **joint and several**, representative in nature or subject to specific statutory limitations or defences. Therefore, the provisions must be examined individually and in the context of the language employed in the respective section.

1.3 Distinction from Ordinary Tax Liability

The liability contemplated under Chapter XVI is distinct from the ordinary liability arising from a taxable supply under the charging provisions of the GST law. The fact that a person is a director, partner, legal representative, agent, trustee or other person connected with a taxable person does not, by itself, determine the extent of his or her liability. The relevant provision of Chapter XVI must specifically apply to the facts of the case.

Consequently, the provisions of Chapter XVI need to be read together with the substantive and procedural provisions of the CGST Act and the CGST Rules, including the provisions relating to determination of tax, interest and penalty, issuance of notice, opportunity of hearing, adjudication, payment and recovery.

1.4 Purpose of Chapter XVI

The underlying objective of Chapter XVI is to ensure that a change in the legal status, ownership, constitution or control of a business does not, by itself, result in the extinguishment or avoidance of legitimate GST dues. At the same time, the statutory framework recognises that liability can be imposed upon persons other than the original taxable person only in the circumstances specifically contemplated by law.

The provisions therefore seek to strike a balance between **protection of revenue and adherence to statutory limits and procedural safeguards**.

Brief Summary of Chapter XVI of CGST Act, 2017

Section	Situation	Person(s) on whom liability is fastened
85	Transfer of business	Transferor + Transferee
86	Agent/Principal	Agent + Principal
87	Amalgamation/Merger	Amalgamating companies
88	Liquidation	Liquidator / Directors in specified circumstances
89	Private company	Directors
90	Firm	Firm + Partners
91	Minor/Incapacitated person	Guardian/Trustee/Agent
92	Estate under specified control	Court of Wards/Receiver/ Manager etc.
93	Death of taxable person	Legal representative/person continuing business
94	Discontinuance/reconstitution	Partners/Members

2. LIABILITY IN CASE OF TRANSFER OF BUSINESS (SECTION 85)

2.1 Statutory Provision

(1) Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person up to the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

(2) Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.

2.2 Analysis

Section 85 of the CGST Act deals with liability to pay taxes, interest or penalty in case of transfer of business. Sub-section (1) states that where any taxable person liable to pay tax under the CGST Act, transfers his business, he and the person to whom the business is so transferred shall be jointly and severally liable to pay tax, interest or any penalty due upto the time of transfer. The key requisites of this provision are:

- There is a transfer
- By a taxable person
- The transfer is of business,
- The transfer can be in whole or in part
- The transfer be by way of sale, gift, lease, leave and license, hire or in any other manner whatsoever

In the above cases, the transferor and transferee shall, jointly and severally, be liable, wholly or to the extent of such transfer, to pay the tax, interest or any

penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer but has remained unpaid or is determined thereafter.

We shall now examine the different requisites in the following paragraphs.

(a) **There is a transfer:** A 'transfer' includes a sale at full value, a sale at an under value, an exchange and a gift. Therefore, a transferor may be a seller or donor. A transferee may be a purchaser or donee. The transfer can be to a person with no previous interest in the business, e.g. a third-party purchaser. It can be a change of legal entity, e.g. when a sole proprietor converts the entity into a partnership or private limited company. It can also be in the form of a succession, or transfer under will etc. Transfer of ownership is not always transfer of business; for e g., in case a person transfers 100% shares of a private limited company to another person, the same would not amount to transfer of business but transfer of securities or his interest in such business. The disposal of shares, unaccompanied by the transfer of assets, does not allow the transferee to carry on an independent economic activity as the transferor's successor. Similarly, transfer of property is not equal to transfer of business. For e g., if a doctor had rented a shop to a tenant who starts and run a shoe retail shop in such shop and after some years sells the property to the tenant. This case is not a transfer of a business but transfer of the premises only. The business of the doctor is rental and not shoe retail.

(b) **By a taxable person:** It is important to note that the liability in case of transfer of business in not limited to a registered person (person who is registered under GST laws). However, if the transferor is a taxable person, the present section would apply. A taxable person has been defined in Section 2(107) of the CGST Act, 2017 to mean a person who is registered or liable to be registered under section 22 or section 24.

(c) **Transfer is of business:** The Term business has been defined under Section 2(17) of the CGST Act, 2017 as under-

(17) "business" includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

The consideration for transfer of business should be a lump sum consideration. This consideration should be arrived at without assigning values to individual assets and liabilities. In the case of *CIT v. Artex Manufacturing Co*., *[(1997) 227 ITR 260 (SC)],* it was held that if in a business sale transaction, there is a possibility of attribution of price to individual items (plant, machinery and dead stock), such transaction may not qualify as transfer of business. Transfer of business is a supply of services. 'Goods' has been defined in Section 2(102) of CGST Act, 2017 to mean every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. The term 'Services' has been defined in Section 2(102) of CGST Act, 2017 to mean anything other than goods, money and securities but includes activities relating

to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Moreover, in the case of *Paradise Food* v. *State of Telangana (*2017) *W.P. No. 2167 of 2017*, it was held that the transfer of business as a whole could not be considered as sale of goods.

Is transfer of business a 'supply'?

Section 7 of CGST Act, 2017 provides as under-

(1) For the purposes of this Act, the expression "supply" includes—

*(a) all forms of supply of goods or services or both such as sale**, transfer**, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

Thus, any transfer which is done for a consideration in the course or furtherance of business shall fall within the ambit of 'supply'. Thus, we can say that the activity of transfer of a business is a supply.

(d) Transfer can be whole in or in part: The transfer of business may be in whole or part. Thus, the transferor can transfer the business wholly or he can also transfer a part of his business to another person. A part of business does not mean few assets; a part of business means an independent part of business which itself is capable of being continued as a going concern. For e.g., a logistics company transfers its warehousing segment to another company.

(e) Transfer can be by way of sale, gift, lease, leave and license, hire or in any other manner.

The transfer can happen by many ways including but not limited to sale, gift, lease, leave, license, succession etc. We shall discuss some common ways of business transfer in the following paragraphs:

Transfer of business by gift

Such transfers generally happen in case of family businesses where a person intends to discontinue the business on his own and transfers his business to another family member by giving it as a gift as a whole or may choose to transfer business partly.

Further, Schedule I of the CGST Act, 2017 provides certain activities to be considered as a supply even if made without consideration. The relevant entry is reproduced below-

1. *"Permanent transfer or disposal of business assets where input tax credit has been availed on such assets."*

This means where business assets are transferred permanently or disposed of permanently on which input tax credit was claimed, such permanent transfer or disposal shall be considered as a supply even though no consideration is received for such transfer or disposal.

We can conclude that in case of transfer by way of gift, the element of consideration is absent and thus in such a scenario when business assets are transferred by way of gift where no consideration is received, such activity shall be a supply.

Another possible view in this scenario is that transfer of business is outside the purview of supply. Activities involved in business such as sale, exchange, service, etc. are liable to GST, whereas business itself is not supply under the provisions of GST Law. Considering the judgments of Hon'ble Supreme Court and High Court supra, transfer of business is distinct from activity involved in business. Hence, Entry 1 of Schedule I of CGST Act and levy under Section 9 of CGST Act are not attracted on this ground.

Transfer of business by sale

Now, there can be transfer of business by sale in two ways i.e. asset transfer or business transfer. When there is a sale of business assets, one intends to purchase only the business assets without the liabilities of the business. The transferor, still, has the legal ownership over his business but not over the assets, whether tangible or intangible. Transfer of business assets can be an example where a business is not transferred wholly but partly which further means it is not a slump sale.

Further, Schedule II of CGST Act deals with the activities or transactions to be treated as supply of goods or services. We shall discuss the clauses under para 4 of this Schedule which deals with transfer of business assets, provided as under-

4. "Transfer of business assets

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of goods by the person;"

This clause provides that when goods that form part of the business assets are transferred or disposed of as per the instructions of the person who carries such business, such transfer or disposal of goods shall be a supply of goods made by such person.

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, the usage or making available of such goods is a supply of services;

This clause provides that where a person carrying on a business gives direction to put goods for a personal use which were earlier held for carrying the business or to make them available to any other person for personal use excluding the business purpose, such usage or making the goods available to another person shall be a supply of services.

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless-

(i) the business is transferred as a going concern to another person; or

(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

It provides that where a person has ceased to be a taxable person, it shall be deemed that the assets of the business carried on by him have been supplied by him in the course or furtherance of his business before he ceased to be a taxable person. It should be noted that transfer of assets is considered as a supply of goods whereby only assets are transferred and not the whole business. However, an exception has been provided which states that when such taxable person transfers the business as a going concern to another person before he ceases to be

a taxable person, then such transfer of assets shall not be considered to be supplied by him. Another exception provides that where the business of such taxable person is carried on by a personal representative who is considered as a taxable person then such transfer of assets shall not be considered as a supply.

Further, *Notification 12/2017-Central Tax (Rate) dated 28.06.2017* provides as under-

S. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent)	Condition
2	Chapter 99	Services by way of transfer of a going concern, as a whole or an independent part thereof	NIL	NIL

Thus, there are two conditions to avail this notification namely-

1. Transfer of a going concern
2. Such transfer shall be as a whole or an independent part

This means that transfer of a business as a going concern shall be such that the business activity is capable of being run as an independent unit.

Now, on the other hand, in a business sale, a business is transferred in its entirety including the capital, workers, assets, liabilities, goodwill, licences, products and services and other benefits associated with the business and thus, it will get covered under slump sale.

Transfer of assets vs. transfer of business: The difference was highlighted by Supreme Court in the case of *Karnataka and Another v. Shreyas Papers (P) Ltd. (2006) 1 SCC 615*. The Supreme Court did not accept the contention that "business" could not be separated from the assets of the business. It was held that 'business' is an activity, directed with a certain purpose, more often towards producing income or profit

and ownership of assets is merely an incident rather than a characteristic of business. Hence, the mere transfer of one or more species of assets does not necessarily bring about the transfer of the "ownership of the business". "Ownership of a business" is much wider than mere ownership of discrete or individual assets. In fact, "ownership of business" is wider than the sum total of the ownership of a business' constituent assets. Above all, transfer of "ownership of business" requires that the business be sold as a going concern.

Transfer of business in case of death of sole proprietor

In this context, *Circular No. 96/15/2019-GST dated 28.03.2019* clarifies as under –

***"2.** Clause (a) of sub-section (1) of section 29 of the CGST Act provides that reason of transfer of business includes "death of the proprietor". Similarly, for uniformity and for the purpose of sub-section (3) of section 18, sub-section (3) of section 22, sub-section (1) of section 85 of the CGST Act and sub-rule (1) of rule 41 of the CGST Rules, it is clarified that transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor."*

Thus, it was clarified that transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor.

Sub-section (2) states that where the transferee carries on such transferred business in his own name or in some other name, he will be liable to pay the taxes on supply of goods or services or both effected by him with effect from the date of such transfer, which means that the liability to pay tax on supply after the transfer took place is solely on the transferee. Further if the transferee is a registered person, he has to apply for amendment of his registration certificate within the prescribed time.

Where the business is transferred by the reason of death of sole proprietor, *Circular No. 96/15/2019 dated 28.3.2019* has clarified the provisions in respect of transfer of unutilised input tax credit lying in electronic credit ledger to the transferee, the liability to pay any tax, interest and/or penalty due from the transferor. The process mentioned in the Circular is as follows:

- *Registration liability of transferee / successor:* As per the provisions of section 22(3) of the CGST Act, the transferee / successor is liable to be registered with effect from the date of such transfer or succession by filing application in FORM GST REG-01. While filing the application, the applicant is required to mention the reason to obtain registration as "death of the proprietor".

- *Cancellation of registration on account of death of the proprietor:* As per clause (a) of section 29(1) of the CGST Act, the legal heirs have to file the application for cancellation of registration in FORM GST REG-16 electronically on common portal on account of transfer of business for any reason including death of the proprietor. In FORM GST REG-16, reason for cancellation is required to be mentioned as "death of sole proprietor". The GSTIN of transferee to whom the business has been transferred is also required to be mentioned to link the GSTIN of the transferor with the GSTIN of transferee.

- *Transfer of input tax credit and liability:* Section 18(3) of the CGST Act, allows the transfer of the unutilized input tax credit lying in electronic credit ledger of transferor to the transferee in the manner prescribed in rule 41 of the CGST Rules, where there is specific provision for transfer of liabilities. It is also clarified that the transferee / successor shall be liable to pay any tax, interest and/ or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor.

- *Manner of transfer of credit (Rule 41(1) of the CGST Rules):*

    - A registered person shall file FORM GST ITC-02 electronically on the common portal with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee. In case of transfer of business on account of death of sole proprietor, the transferee / successor shall file FORM GST ITC-02 in respect of the registration which is required to be cancelled on account of death of the sole proprietor. FORM GST ITC-02 is required to be filed by

the transferee/successor before filing the application for cancellation of such registration in FORM GST REG-16.

- The transferee /successor shall accept the details so furnished on the common portal. On acceptance, the un-utilized input tax credit specified in FORM GST ITC-02 shall be credited to the electronic credit ledger of the transferee / successor.
- The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

2.3 Examples of transfer of business and liabilities therein

Example 1. Assume A transfers his business to B with effect from 01/07/2026 and the tax, interest or penalty due from A totals Rs. 500,000/- before 01/07/2026 and remains unpaid till transfer. In this situation, A and B are jointly and severally liable to pay Rs. 500,000/-.

If another Rs. 5,000/- is determined after the transfer took place for the transactions done by A before 01/07/2026, then also both A and B will be jointly and severally liable.

Example 2. X registered under GST carrying on business dies on 01/03/2026. The business gets automatically transferred to his legal heir Y. The taxes due on 01/03/2026 are Rs. 300,000/-.

In this case, Y being transferee is liable to pay Rs. 300,000/-.

2.4 Significant Judicial Pronouncement

Transfer of Individual Assets Does Not Necessarily Amount to Transfer of Business under Section 85 of the CGST Act

[M/s JR Metal Chennai Ltd. v. The Assistant Commissioner of Central Tax and Two Others, 2024:APHC:3481 (Andhra Pradesh HC)].

In *M/s JR Metal Chennai Ltd. v. The Assistant Commissioner of Central Tax (Andhra Pradesh High Court, 8 May 2024)*, the petitioner had purchased plant and machinery, land, building, etc. from another entity but contended that it had not purchased or taken over the business and, therefore, Section 85 of the CGST Act, 2017, relating to liability in case of transfer of business, was not applicable. The Court observed that mere transfer of individual assets does

not necessarily amount to transfer of the business and that there must be material showing that the business itself was transferred and that the transferee succeeded to such business. However, whether there was an actual transfer of business was held to be a question of fact requiring determination on the basis of evidence. Since the impugned order was not prima facie without jurisdiction, the Court declined to examine the disputed factual issue in writ jurisdiction and dismissed the writ petition on the ground of availability of the statutory alternative remedy of appeal.

3. LIABILITY OF AGENT AND PRINCIPAL (SECTION 86)

3.1 Statutory Provision

Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

Section 86 of the CGST Act deals with the liability to pay tax on supplies made by the agent on behalf of his principal and such supply involves goods. The goods basically belong to the principal and are supplied or received by the agent and in such cases, the first liability lies with agent (if registered under his own GSTIN and not that of the Principal). However, the provision creates a joint and several liabilities on Principal as well in case of default by such agent. We shall now discus the same in detail hereunder.

3.2 Analysis

- **Who is an Agent?**

Section 2(5) of the CGST Act, 2017 provides the meaning of 'agent' as under-

"agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

Thus, an agent is a person who undertakes to engage in the business of supply or receipt of goods or services or both on behalf of another person. An agent includes the following persons-

- Factor

- Broker
- Commission agent
- *Arhatia*
- *Del credere* agent
- Auctioneer
- Any other mercantile agent

It is pertinent to mention that the term 'agent' has also been included in the definition of intermediary under the Integrated Goods & Services Tax Act, 2017 which is reads thus:

2(13) "intermediary" means a broker, an agent *or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;*

Thus, an agent is also included in the definition of an intermediary as a person who arranges the supply of goods or services or both excluding such supply of goods or services or both is not on his own account.

In the context of section 86, it is pertinent to note that the term "agent" is defined under section 2(5) of the CGST Act to mean a person who carries on the business of supply or receipt of goods or services or both on behalf of another. However, Section 86 specifically applies where an agent supplies or receives any taxable goods on behalf of his principal, making both the agent and the principal jointly and severally liable to pay the tax payable on such goods. This provision may be distinguished from the concept of an "intermediary" under section 2(13) of the IGST Act. An intermediary is a person who arranges or facilitates the supply of goods or services or both between two or more persons but does not supply such goods or services on his own account. Accordingly, a person merely providing intermediary services, without undertaking the underlying supply of taxable goods on behalf of the principal, would not fall within the scope of Section 86 merely by virtue of being an intermediary.

In both the above terms, it is important to mention that agent undertakes supply on behalf of another person. He does not make a supply on his own account. The basic difference is that an agent is in a position to effect a supply on behalf

of another person. For instance, Mr. X received 100 bags of cement from Mr. Y, to be sold in local market. Whatever sales he makes, he will get 5% of such sale value as his commission. In this case, whenever the sale is made, the sale value accrues to Y and only the commission accrues to X. GST arising out of sale of 100 bags of cement, both Agent and Principal are jointly and severally liable to pay to exchequer.

The important features of being an agent are as follows:

— The agent receives the custody of goods or services to be supplied but not their ownership

— The risk and reward of such goods or services (including unsold inventory) remains with the principal

— The principal has direct privity with the customer as the agent does not sell in his own capacity but as an agent of the principal and on behalf of principal

- **Who is a Principal?**

Section 2(*88*) of the CGST Act provides the meaning of 'principal' as under-

"principal" means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both;

Thus, a principal is a person who appoints an agent to carry on his business of supply or receipt of goods or services or both on his behalf.

Supply of Goods by a Principal to his Agent or Vice Versa

Schedule I of CGST Act, 2017 provides as under-

"3. Supply of goods-

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal."

Thus, supply of goods by a principal to his agent where agent undertakes to supply such goods on behalf of the principal or by an agent to his principal where agent undertakes to receive such goods on behalf of the principal shall be treated as supply even though the element of consideration is not present in such a transaction.

It should be noted that the above entry excludes supply of services by a principal to his agent or vice-versa from the ambit of supply when such supply is made without consideration.

Whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal

Circular No. 57/31/2018-GST [CBEC-20/16/4/2018-GST] dated 4-9-2018 provides clarification as to how to determine whether an agent acts in the capacity of a representative of the principal or not, in supplying or receiving goods? The relevant paragraph from the Circular is reproduced below-

> *7. "…Thus, the key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal."*

It provides that to determine the relationship between the principal and agent, it is required to check whether the invoice for further supply of goods on behalf of the principal is issued by the agent or not. In first scenario, if an agent supplies goods but raises invoice in his own name then provision of goods from principal to agent would fall within the ambit of the Entry No. 3 under Schedule I of CGST Act, 2017. In the same manner, if goods are received by the agent on behalf of a principal and the invoice is made in the name of agent then provision of such goods by agent to principal would be covered by the said entry.

In the second scenario, if an invoice is issued by an agent directly in the name of the principal, then he is not acting as an agent and shall be outside the ambit of entry no. 3 under Schedule I of CGST Act, 2017.

The Department had given various examples in the Circular itself to make the understanding clearer. Such examples are mentioned below-

Scenario 1

Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by Mr. A, and asks the supplier (Mr. C) to send the goods and issue the invoice directly to Mr. A. In this scenario, Mr. B is only acting as the procurement agent and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Mr. B is not an agent of Mr. A for supply of goods in terms of Schedule I.

Scenario 2

M/s XYZ, a banking company, appoints Mr. B (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s XYZ. The invoice for the supply of the goods is issued by M/s XYZ to the successful bidder. In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mr. B is not an agent of M/s XYZ for the supply of goods in terms of Schedule I.

Scenario 3

Mr. A, an artist, appoints M/s B (auctioneer) to auction his painting. M/s B arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by M/s B on the behalf of Mr. A but in his own name and the painting is delivered to the successful bidder. In this scenario, M/s B is not merely providing auctioneering services, but is also supplying the painting on behalf of Mr. A to the bidder, and has the authority to transfer the title of the painting on behalf of Mr. A. This scenario is covered under Schedule I.

Scenario 4

Mr. A sells agricultural produce by utilizing the services of Mr. B who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Mr. B identifies the buyers and sells the agricultural produce on behalf of Mr. A for which he charges a commission from Mr. A. As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction.

Need for Registration under GST Law being an Agent

If we refer Scenario 1 and Scenario 2 as mentioned above in the examples, there is no need for registration since the invoice was generated in the name of principal directly. However, under Scenario 3 and Scenario 4, there is a need for registration since services of being an agent are undertaken. Moreover, Section 24(vii) of the CGST Act provides as under-

Compulsory registration in certain cases.

24. Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,—

(vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise

Thus, an agent who supplies taxable goods or services or both *on behalf of another* person is required to take registration compulsorily under the GST Act irrespective of the fact that his aggregate turnover does not exceed the threshold limit.

However, Section 23(1)(a) of CGST Act, 2017 provides as under-

"Persons not liable for registration

23. *(1) The following persons shall not be liable to registration, namely:–*

(a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;

(b) an agriculturist, to the extent of supply of produce out of cultivation of land."

Thus, any person who is exclusively engaged in the supply of goods or services or both that do not attract taxes or exempt from the levy of GST under CGST Act or IGST Act, such person shall not be liable for registration under the Act. Further, an agriculturist who is supplying produce out of cultivation of land is exempted from registration. This means that a commission agent providing services related to agricultural produce on behalf of the agriculturist who himself is not liable for registration shall be exempt from obtaining registration under the Act.

An agent makes two supplies – one of goods and services on behalf of the principal to the customer and the other of his own services as a commission

agent (as a supplier) to the principal. It is important to note that even when agent supplies exempted goods or services, his supply to principal shall be independent and shall not be exempt (unless specific exemption distinct from exemption of goods and services supplies is available to him). *[Refer Circular No. 73/47/2018-GST [No. CBEC/20/16/04/2018-GST], dated 5-11-2018].*

Liability in case of Principal- Agent

In this case, both A and B shall be jointly and severally liable to pay the taxes on taxable goods being sold. Further, it should be noted that this section talks only about the liability to pay taxes if the agent supplies or receives any taxable goods on behalf of the principal. It does not mention about liability to pay taxes in case of services. Furthermore, this section only applies in case of taxes; there is no mention of interest or penalty. Thus, any taxable goods which belong to principal when sold by the agent, in such case, the liability of GST which accrues on sale of such goods, both principal and agent shall be liable to pay GST on such supplies. For e g., X sold goods worth Rs. 10,00,000 taxable @18% on behalf of Y, his principal. X and Y are both jointly and severally liable to pay GST of Rs. 1,80,000 on such transaction. Even if X absconds with the entire sale proceeds and tax collected, Y shall be held liable for payment of such GST.

3.3 Significant Judicial Pronouncement

Joint and Several Liability of Agent Restricted to Supply of Goods
[M/s NBCC (India) Limited v. Additional Commissioner, CGST Delhi South, 2025:DHC:11115-DB (Delhi High Court, 9 December 2025)]

In this case, the petitioner, acting as the implementing agency for the Ministry of Urban Development (MoUD) in the re-development of Kidwai Nagar (East), was subjected to a GST demand of ₹45.36 crore on lease proceeds received through an escrow arrangement. NBCC contended that it acted only as an agent of the Ministry and did not appropriate the lease proceeds as its own revenue. The Court noted the Ministry of Finance's view that Section 86 of the CGST Act creates joint and several liability for an agent and principal only in respect of taxable goods and contains no corresponding provision for services. Since the lease of commercial space involved services and the Ministry, as principal, remained available to discharge any GST liability, the Ministry of Finance opined that the demand against NBCC had no legal basis.

Accordingly, the Delhi High Court set aside the impugned order dated 29 January 2025 raising the GST demand and disposed of the petition.

4. LIABILITY IN CASE OF AMALGAMATION OR MERGER OF COMPANIES (SECTION 87)

4.1 Statutory Provision

(1) When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.

(2) Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled with effect from the date of the said order.

4.2 Analysis

Section 87 states the liability to pay taxes in case of amalgamation or merger of two or more companies where the following conditions are present:

- The amalgamation or merger takes place pursuant to an order of court or order of Tribunal or otherwise
- Such order is to take effect from a date earlier to the date of the order
- Any two or more of such companies have supplied any goods or services or both to each other or received any goods or services or both from each other during the period commencing on the date from which the order takes effect till the date of order.

In this situation, such transactions of supply and receipt between the companies (which are amalgamated or merged) during the period commencing on the date from which the order takes effect till the date of order will be

included in the turnover of supply or receipt of the respective companies and they will be liable to pay tax accordingly.

Example 1. A Ltd. and B Ltd. are merged by the order of court to Form AB Ltd. The date of passing the order is 01/12/2025 but the order is to take effect from 01/04/2025 i.e. earlier to the date of order. A Ltd. supplied goods worth Rs.500,000/- to B Ltd. on 10/04/2025 (i.e. between 01/04/2025 and 01/12/2025). Then such amount of Rs. 500,000/- will be included in the turnover of A Ltd. as supply of goods and turnover of B Ltd. as receipt of goods and accordingly A Ltd. and B Ltd. shall be liable to pay taxes on it. Also, A Ltd. and B Ltd. will be treated as distinct companies up to 01/12/2025 and their registration certificates will be cancelled with effect from 01/12/2025.

Amalgamating Companies shall be considered as Distinct Persons till the date of order

For the purposes of the CGST Act, 2017, the said companies shall be treated as distinct companies for the period up to the date of said order which means that both the companies shall be considered as a single entity from the appointed date. Moreover, their registration certificates shall be cancelled with effect from the date of said order. Further, Schedule I of the CGST Act, 2017 provides as under-

2. *Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business*

Since the companies under this section have been treated as distinct persons, any supply of goods or services or both between such companies shall be considered as a supply even if it is made without consideration. However, such transaction should be made in the course of or in furtherance of the business.

Relevance of appointed date and order date

An appointed date is the date agreed between the parties from which such amalgamation or merger is to take effect and such date is specified in the respective scheme of amalgamation. This is the date when the amalgamation of the business is effected and the assets and liabilities are transferred to the amalgamated or merged company. Section 232(6) of the Companies Act, 2013 states that the scheme shall be deemed to be effective from the 'appointed date' and not a date subsequent to the 'appointed date'. This is an enabling provision to allow the companies to decide and agree upon an 'appointed date'

from which the scheme shall come into force. The 'effective date' is commonly used in schemes to refer to the date on which the requisite conditions/formalities for the scheme becoming operative are fulfilled, Thus, there is generally a long gap between the two dates.

In *Marshall Sons & Co. India Ltd. v. ITO* (1997) *223 ITR 809 (SC),* it was held by the Supreme Court that every scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation / transfer shall take place and that such date may precede the date of sanctioning of the scheme by the Court, the date of filing of certified copies of the orders of the Court before the Registrar of Companies and the date of allotment of shares, etc. It was observed therein that, the scheme, however, would be given effect from the transfer date (appointed date) itself.

Requirement of Registration under CGST Act, 2017

Further, Section 22(4) of the CGST Act relating to persons liable for registration reads as:

(4) Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, de-merger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

The above sub-section provides that if the business is transferred consequent to an order of a High court, Tribunal, or otherwise pursuant to arrangements for amalgamation or de-merger of two or more companies, the transferee shall be liable to be registered, with effect from the date on which the Registrar of the Companies issues a certificate of incorporation. Thus, on harmonious construction of both provisions, one can say that the amalgamating / merging entities would remain distinct entity till the date of issuance of certificate of incorporation of the new entity and thereafter the new entity would be required to obtain registration and the business of the amalgamating / merging entities would cease thereafter.

Provisions of Input Tax Credit in case of amalgamation or merger

Section 18 of the CGST Act 2017 deals with the availability of credit in special circumstances. The section provides as under-

(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

Thus, when constitution of a business of a registered person is changed due to merger or amalgamation, such registered person is allowed to transfer the unutilised input tax credit lying in his electronic leger to such merged or amalgamated company in a manner as prescribed under Rule 41 of CGST Rules, 2017. However, it should be noted that such transfer shall be allowed only if there is a specific provision for transfer of liabilities else input tax credit cannot be transferred.

The manner of transfer of the credit on account of merger or amalgamation has been prescribed under Rule 41 of the CGST Rules, 2017 as follows:-

- The registered person/transferor whose business is to be merged or amalgamated shall furnish the details of such merger or amalgamation in FORM GST ITC-02**,** electronically, along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee.
- The registered person/transferor shall also submit a copy of a certificate issued by a practicing Chartered Accountant or Cost Accountant certifying that the merger or amalgamation, as the case may be, has been done with a specific provision for the transfer of liabilities.
- The transferee shall accept the details so furnished by the transferor and after such acceptance, the amount of unutilised input tax credit as mentioned by the transferor in the FORM GST ITC-02 shall be credited to the electronic credit ledger of transferee.
- The inputs and capital goods so transferred must be duly accounted for by the transferee in his books of account

Further, a transferor is required to file FORM GST ITC-02 only in those States where both transferor and transferee are registered.

[Refer CBIC Circular No.133/03/2020-GST dated 23.03.2020]

A point to note is that Section 87 is applicable in the case of amalgamation and merger of companies only and in no other form of business organisation. The provision is brought to clarify the liabilities during the period between the application and order for amalgamation.

4.3 Significant Judicial Pronouncements

1. Show Cause Notice Issued to Non-Existent Amalgamating Company – Proceedings Held Void Ab Initio

[Kanakia Spaces Realty Private Limited v. Union of India, 2026:BHC - W.P. No. 2586 of 2026 (Bom.), decided on 24 June 2026].

The case concerns with Kanakia Spaces Realty Private Limited (KSRPL), which had absorbed Kanakia Supremo Construction Private Limited (KSCPL) through a court-approved amalgamation scheme effective from 1 April 2015, following which KSCPL ceased to exist as a legal entity. Despite being informed multiple times of this merger, the GST authorities issued a show cause notice dated 25 June 2025 under Section 74 of the CGST Act in the name of the defunct KSCPL, ultimately confirming a GST demand of over Rs. 42.65 crore via an Order-in-Original dated 31 December 2025. The Bombay High Court held that proceedings initiated against a company that has already amalgamated and ceased to exist are void ab initio, relying on the Supreme Court's ruling in *Maruti Suzuki India Ltd.* and the Bombay High Court's own precedents in *Reliance Industries Limited vs. P.L. Roongta* and *Vodafone Idea Ltd. vs. Union of India*. The Court rejected the Revenue's argument that Section 87 of the CGST Act (dealing with liability in cases of amalgamation) permitted such action, clarifying that Section 87 applies only to the intervening period between the effective date and the date of the merger order, not to post-merger proceedings against a non-existent entity. Consequently, the Court quashed both the show cause notice and the Order-in-Original as issued without jurisdiction, while expressly clarifying that this ruling was confined to the jurisdictional defect and left it open to the authorities to pursue recovery proceedings against KSRPL (the surviving entity) through proper legal channels if otherwise permissible.

2. GST registration consequences of amalgamation

[M/s Alstom Transport India Limited v. Additional Commissioner, CGST & Central Excise (Appeals) & Ors., R/Special Civil Application No. 11025 of 2025, decided on 23 January 2026 (Gujarat High Court)]

In this case, the Gujarat High Court considered the entitlement to refund of unutilised ITC following the amalgamation of Alstom Rail Transportation India Pvt. Ltd. (ARTIPL) and other entities into Alstom Transport India Ltd. (ATIL). The case arose in the context of the amalgamation of Alstom group entities into M/s Alstom Transport India Ltd. (ATIL). The Gujarat High Court examined the GST consequences of such amalgamation, particularly in relation to the unutilised input tax credit and the status of the GST registration of the amalgamating entity. The Court considered the applicability of Section 87 of the CGST Act, 2017, which deals with the liability of companies undergoing amalgamation or merger. The case is relevant for understanding the statutory consequences under GST where an amalgamating entity ceases to exist pursuant to an order of the competent authority.

Section 87(2), beginning with a non-obstante clause, mandates that, for GST purposes, the amalgamating companies are to be treated as distinct companies only up to the date of the court/Tribunal order and their GST registrations shall be cancelled with effect from the date of such order. Thus, the Court held that the registration of the transferor company could not validly continue beyond the date of the NCLT's amalgamation order. In the present case, ARTIPL's GST registration ought to have been cancelled with effect from 10.08.2023, the date of the NCLT order, rather than 29.11.2024. The judgment therefore establishes that Section 87(2) has an overriding effect in determining the GST status of amalgamating entities and requires their registrations to be aligned with the date of the amalgamation/merger order, preventing the transferor and transferee entities from continuing as separate GST-registered persons beyond that date.

3. Section 87 preserves tax liabilities, not the legal existence of the amalgamating company

[HCL Infosystems Ltd. v. Commissioner of State Tax & Anr., W.P.(C) 7391/2024, decided on 21 November 2024, Delhi High Court]

In this case., the Delhi High Court explained that Section 87 of the CGST Act, 2017 is intended to preserve the taxability of transactions undertaken between companies during the period between the retrospective effective date of an amalgamation/merger and the date of the court or Tribunal order. Under Section 87(1), such inter-company supplies and receipts are included in the respective companies' turnover and taxed accordingly. Further, Section 87(2), notwithstanding the amalgamation order, treats the amalgamating and

amalgamated companies as distinct companies for GST purposes up to the date of the order, after which their GST registrations are to be cancelled. However, the Court clarified that Section 87 does not authorise the tax authorities to initiate or continue proceedings against a company that has ceased to exist pursuant to amalgamation. The tax liabilities of the erstwhile company stand transposed to and are borne by the amalgamated company. Thus, Section 87 safeguards the Revenue's right to tax transactions and preserve tax liabilities arising during the transition, while simultaneously recognising the cessation of the transferor company for GST proceedings after the date of the amalgamation order.

5. LIABILITY IN CASE OF COMPANY IN LIQUIDATION (SECTION 88)

5.1 Statutory Provision

(1) When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter in this section referred to as the "liquidator"), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.

(2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.

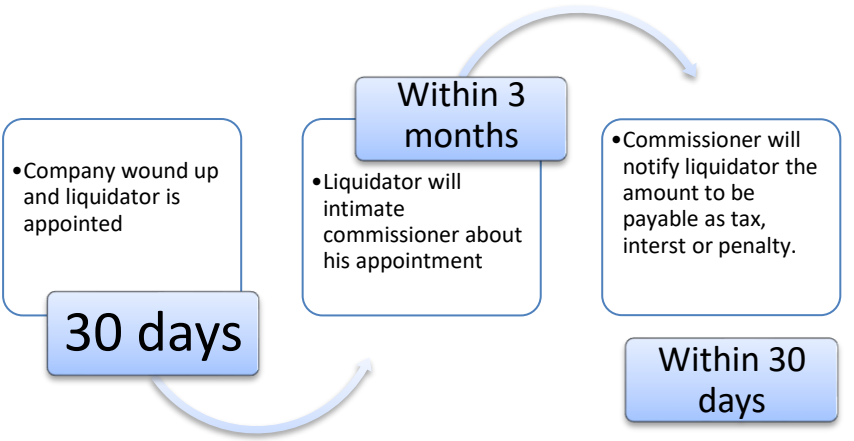
(3) When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

5.2 Analysis

Section 88 deals with the liability to pay tax, interest or penalty in case of liquidation of companies.

Section 88(1) and Section 88(2) provide that when any company is being wound up whether under the order of Court or order of Tribunal or otherwise, then every liquidator appointed has to give intimation of his appointment to the Commissioner within 30 days of his appointment. Then the Commissioner shall after calling for information as he deems fit notify the liquidator the amount towards any tax, interest or penalty which is then payable or likely to become payable by the company within 3 months from the date of receipt of intimation of the appointment.

The above clause has been summarized in the following flowchart:



Liability on Directors in case of non-recovery from Liquidating Company

Section 88(3) states that when any private company is wound up and any tax, interest or penalty for any period determined under CGST Act cannot be recovered then every person who was a director of such company *at any time during the period for which the tax was due* shall jointly and severally be liable to pay such tax, interest or penalty.

However, an exception has been carved out of the above provision that if the director proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company then he will not be held liable

for payment of such tax, interest or penalty. It should be noted that Section 88(3) covers only private companies.

Further, Rule 160 of CGST Rules, 2017 mentions as under-

"Recovery from company in liquidation.-

160. *Where the company is under liquidation as specified in section 88, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in FORM GST DRC -24****".***

Thus, a Commissioner shall issue intimation to the liquidator for recovery of tax, interest, penalty or any other dues under the GST Act by issuing FORM GST DRC-24 before the final winding up of the company.

Example 1

A, B and C are directors of XYZ Ltd., a company which has gone into liquidation. D, the liquidator is appointed on 01.04.2026. Now, D within 30 days of his appointment shall inform the Commissioner about his appointment. He informs about his appointment on 29.04.2026.

Thereafter, the Commissioner shall within three months of receiving the intimation inform the liquidator about the recovery amount in FORM GST DRC-24 i.e. up to 28.07.2026. He informs the GST liability on 29.06.2026. Now the company shall pay the dues before final winding up of the company.

Example 2

XYZ Ltd. is a private company, and it decides to wind up. In such case, all the directors i.e. A, B and C who were directors of the private company during such period for which tax amount is to be paid shall be jointly and severally be liable for the payment of GST liability. Further, if A fails to pay the liability, then B & C shall be liable to pay the amount. But in case, B proves to the satisfaction of the Commissioner that such liability is not due to his neglect then he can be exonerated from the liability to make the payment and in such scenario only C shall be liable to pay the dues.

Certain important definitions

- ***Commissioner***

  Section 2(24) of the CGST Act, 2017 provides as under-

"Commissioner" means the Commissioner of Central Tax and includes the Principal Commissioner of Central Tax appointed under section 3 and the Commissioner of Integrated Tax appointed under the Integrated Goods and Services Tax Act;

Thus, a 'Commissioner' is a Commissioner of Central Tax and also includes –

- Principal Commissioner of Central Tax appointed under section 3 of CGST Act, 2017
- Commissioner of Integrated Tax appointed under the Integrated Goods and Services Tax Act

The terms 'private company' and 'director' are not defined under the CGST Act and therefore one could refer to the Companies Act, 2013 for their meaning.

As per section 2(68) of the Companies Act, 2013, "private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its Articles,—

(i) restricts the right to transfer its shares;

(ii) except in case of one person company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(*A*) persons who are in the employment of the company; and

(*B*) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company;

Thus, the essentials of a private company are as under-

- Minimum paid-up share capital

- Right to transfer shares cannot be exercised
- Maximum two hundred members except in case of one person company where only one person is a member. However, the First Proviso mentions that if two or more persons hold one or more shares in a company jointly, they shall be treated as single member. The Second Proviso mentions that employees of the company and such persons who were employees of the company and also members of the company during their employment and after their employment have continued to be members of the company shall not be included in the number of members.
- Public cannot subscribe to the securities of the company

Section 2(34) of the Companies Act, 2013 provides as under –

> *"director" means a director appointed to the Board of a company.*

Thus, director is a person who is appointed to the board of a company who shall act to promote the objects of the company.

Liquidator has nowhere been defined under CGST Act, 2017, but under Companies Act, 2013 it has been defined as under—

> *2(23) — "Company Liquidator" means a person appointed by the Tribunal as the Company Liquidator in accordance with the provisions of section 275 for the winding up of a company under this Act;*

5.3 Significant Judicial Pronouncement

Directors cannot be fastened with GST liability under Section 88(3) where company ceased to exist before issuance of show cause notice

[M/s Hitachi Nest Control Systems Pvt. Ltd. v. Additional Commissioner of Central Tax, 2024:KHC:11803 (Kar.)]

The Karnataka High Court, vide order dated 21 March 2024, held that GST assessment or adjudication proceedings cannot be initiated against a company after it has been dissolved under Section 59(8) of the Insolvency and Bankruptcy Code, 2016, as the company ceases to exist in the eyes of law. In the present case, the petitioner's GST registration had been cancelled with effect from 30 September 2020, and the Company was dissolved by the NCLT on 15 February 2023, whereas the impugned GST show cause notice and adjudication order were issued thereafter. Reliance was placed upon the principles laid down in *Spice Entertainment* and *Maruti Suzuki*, the Court held

that proceedings against a non-existent entity constitute a jurisdictional defect, and not a mere procedural irregularity. The Court further rejected the Revenue's reliance on Section 88(3) of the CGST Act, observing that the provision presupposes a determination of tax, interest or penalty against the company and subsequent inability to recover the same. Accordingly, the Court allowed the writ petition and quashed the show cause notice dated 29 September 2023 and the adjudication order dated 27 December 2023.

6. LIABILITY OF DIRECTORS OF PRIVATE COMPANY (SECTION 89)

6.1 Statutory Provision

(1) Notwithstanding anything contained in the Companies Act, 2013 (18 of 2013), where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(2) Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company:

PROVIDED that nothing contained in this sub-section shall apply to any personal penalty imposed on such director.

6.2 Analysis

Section 89 imposes liability on directors of private company to pay tax, interest or penalty in case such amount is not paid by such company.

Section 89(1) starts with the phrase '*Notwithstanding anything contained in the Companies Act, 2013 (18 of 2013)'* which means that provisions of this sub-

section overrides the Companies Act, 2013. This sub-section states that if any tax, interest or penalty in respect of any supply of goods or services or both is due from a private company for any period and cannot be recovered then every person who was a director for such period will be jointly and severally liable for payment of such tax, interest or penalty. We can say that a vicarious liability is imposed on the directors in case of a private company although a private company is a separate entity.

No liability on directors in certain cases

But the directors cannot be held liable if they prove that the non-recovery of the tax, interest or penalty cannot be attributed to any gross neglect, misfeasance or breach of duty on their part in relation to the affairs of the company.

The terms gross neglect, misfeasance and breach of duty are not defined under law, and therefore, we refer to their general meanings.

- 'Gross negligence' is the "lack of slight diligence or care" or "a conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party."
- 'Misfeasance' is the wilful inappropriate action or intentional incorrect action or advice.
- 'Breach of duty' means a failure to do something that you are legally responsible for.

Section 89(2) deals with the situation when a private company gets converted into a public company. In such case if any tax, interest or penalty in respect of supply of goods or services or both cannot be recovered for any period during which the company was a private company, then anything contained in section 89(1) will not apply in relation to any tax, interest or penalty to any person who was a director of such private company. This means that when a private company gets converted into a public company then after the conversion if there is any unrecovered tax, interest or penalty due for any period when the company was a private company then the persons who were the directors at that time cannot be held liable for payment of such tax, interest or penalty. But it is provided that these provisions will not apply in case of any personal liability imposed on such directors. Section 89 of CGST Act, 2017 is similar to **Section 323 of the Income Tax Act, 2025** (corresponding to Section 179 of Income Tax Act, 1961) which reads as under-

> ***"Liability of directors of private company in liquidation.***
>
> ***323.*** *(1) Irrespective of anything contained in the Companies Act, 2013 (18 of 2013), where any tax due from—*
>
> *(a) a private company in respect of any income of any tax year; or*
>
> *(b) any other company in respect of any income of any tax year during which such other company was a private company,*
>
> *cannot be recovered, then, every person, who was a director of the private company at any time during the relevant tax year, shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.*
>
> *(2) For the purposes of this section, "tax due" includes penalty, interest, fees or any other sum payable under the Act.*

Thus, Section 323(1) of the Income-tax Act, 2025 provides that where any tax due from a private company or from any other company in respect of income of a tax year relating to any period during which such company was a private company, cannot be recovered from the company, every person who was a director of the company during the relevant period shall be jointly and severally liable for the payment of such tax due. However, a director may avoid such liability by proving to the Assessing Officer that the non-recovery of the tax due cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

No Specific Exclusion in case of Conversion into a Public Limited Company

Under the Income-tax Act, 1961, section 179(2) specifically provided that where a private company was converted into a public company, the provisions relating to the liability of directors under section 179(1) would not apply in respect of tax due for any income of the private company assessable for an assessment year commencing before 1 April 1962.

However, the Income-tax Act, 2025, which replaces the Income-tax Act, 1961, contains the corresponding provision in section 323. Unlike Section 179 of the Income-tax Act, 1961, section 323 does not contain any provision corresponding to section 179(2) providing an exclusion in respect of directors

of a private company that has subsequently been converted into a public company.

Accordingly, while section 89(2) of the CGST Act, 2017 specifically provides that the liability of directors under that section does not apply where the private company has been converted into a public company, section 323 of the Income-tax Act, 2025 contains no corresponding exclusion merely on account of such conversion. Thus, the position under the two enactments is materially different. Although section 89 of the CGST Act, 2017 and section 323 of the Income-tax Act, 2025 deal with the liability of directors of a private company for unrecovered tax dues, they cannot be regarded as *pari materia* provisions in respect of the consequences of conversion of a private company into a public company.

6.3 Significant Judicial Pronouncement

Recovery from Director under Section 89 cannot be initiated without opportunity to prove absence of neglect, misfeasance, or breach of duty

[Khalid Buhari v. Assistant Commissioner of CGST and C. Ex, Chennai, W.P. No. 50484 of 2025, decided on 13.02.2026 (Madras High Court)]

The concerned GST Case Law discusses the validity of a recovery notice in Form GST DRC-13 whereby the petitioner's bank account was attached towards the tax liability of a private company of which he was a director. The Court noted that under Section 89(1) of the CGST Act, directors may be held jointly and severally liable for the company's tax, interest or penalty where such dues cannot be recovered, unless the director proves that the non-recovery was not attributable to his gross neglect, misfeasance or breach of duty. Since the petitioner was required to be given an opportunity to discharge this burden, the Court quashed the recovery notice and remitted the matter to the authority for fresh consideration on merits, directing the petitioner to file a proper reply and requiring the respondent to issue due notice before passing a fresh order.

7. LIABILITY OF PARTNERS OF FIRM TO PAY TAX (SECTION 90)

7.1 Statutory Provision

Notwithstanding any contract to the contrary and any other law for the time being in force, where any firm is liable to pay any tax, interest or penalty

under this Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment:

Provided that where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date:

Provided further that if no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

7.2 Analysis

Section 90 states the liability of partners of firm to pay tax, interest or penalty.

If any firm is liable to pay any tax, interest or penalty under the CGST Act, then the firm and each of the partners of the firm will be jointly and severally liable for payment of such tax, interest or penalty. The liability has been fastened irrespective of the amount of share of such partner in the partnership firm. Also, the liability has been fastened without giving protection as given to directors that in case a partner proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Liability of Partner to intimate his retirement

When any partner retires from the firm, he or the firm will have to intimate the date of retirement to the Commissioner by a notice in writing. Then the retiring partner will be only liable for payment of tax, interest or penalty due up to the date of retirement whether such liability is determined on the date of retirement or thereafter. But if such intimation is not given within one month from the date of retirement, then the liability of the retiring partner will continue till the date on which the intimation is received by the Commissioner. The terms 'partners' and 'firm' are not defined in the CGST Act and therefore one has to refer to section 4 of the Indian Partnership Act, 1932. 'Partner' has been defined under Section 4 of the Indian Partnership Act, 1932 as under-

> *Persons who have entered into partnership with one another are called individually, "partners" and collectively "a firm".*

Further, partnership has been defined under the Act as under-

> *"Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.*

It is important to note that the intimation of retirement of partner is required to be filed to relieve him of future liabilities notwithstanding the fact that such partner has intimated his joining earlier or not.

7.3 Examples

Suppose there is a partnership firm MNO & Co. with partners M, N and O and O retires on 3/7/2026. Tax, interest or penalty due till 3/7/2026 is Rs. 400,000 and tax, interest or penalty due from 3/7/2026 to 2/8/2026 is Rs. 100,000.

Case I: O intimated his date of retirement to Commissioner on 20/7/2026 (i.e. within one month).

In this case, O will only be liable to pay tax, interest or penalty due till 3/7/2026 (i.e. the date of retirement) which equals Rs. 400,000.

Case II: O intimated his date of retirement to Commissioner on 10/8/2026 (i.e. after one month) and the Commissioner received it on this date only.

In this case, O will be liable to pay tax, interest or penalty due till 10/8/2026 (i.e. on receipt of intimation by the Commissioner) which will be Rs. 400,000 + Rs. 100,000 = Rs 500,000.

8. LIABILITY OF GUARDIANS, TRUSTEES, Etc., (SECTION 91)

8.1 Statutory Provision

Where the business in respect of which any tax, interest or penalty is payable under this Act is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent in like manner and to the same extent as it would be determined and recoverable from any such minor or other incapacitated person, as if he were a major or capacitated person and as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

8.2 Analysis

Section 91 deals with the liability to pay tax, interest or penalty of business carried on by guardian, trustee or agent of minor or other incapacitated person on behalf of such minor or other incapacitated person.

It says that in case of a business which is carried on behalf of and for the benefit of a minor or incapacitated person by

- Guardian,
- Agent, or
- Trustee

} of such minor or incapacitated person,

any tax, interest or penalty which is payable with respect to such business will be levied upon and recoverable from such guardian, agent or trustee.

The tax, interest or penalty will be levied and recoverable in like manner and to the same extent as it would be determined and recoverable from any such minor or other incapacitated person as if

- The minor is a major or,
- The incapacitated person is capacitated person.

The above terms are explained as under:

- A minor is an individual who has not attained the age of 18 years.
- An incapacitated person is an individual for whom a guardianship proceeding is initiated. He has been determined by court as lacking the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements.
- Guardian is a person who has been appointed by a judge to take care of a minor child or incompetent adult (both called "ward") personally and/or manage that person's affairs.
- As per section 2(*5*) of the CGST Act, 2017 “agent” means a person, including a factor, broker, commission agent, *arhatia*, *del credere* agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;
- Trustee is a person, who controls property and/or money for another person or an organisation.

9. LIABILITY OF COURT OF WARDS, ETC (SECTION 92)

9.1 Statutory Provision

Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

9.2 Analysis

Section 92 deals with the liability of Court of Wards, the Administrator General, the Official Trustee or any receiver or manager to pay tax, interest or penalty.

It states that where the estate or any portion of the estate of a taxable person owning a business in respect of which tax, interest or penalty is payable under CGST Act is under the control of:

- Court of Wards,
- The Administrator General,
- The official Trustee
- Receiver
- Manager, or
- Any other person who manages the business

} appointed by or under any order of court

then such tax, interest or penalty will be leviable and recoverable from such:

- Court of Wards,
- The Administrator General,
- The official Trustee,

- Receiver,
- Manager, or
- Any other person who manages the business

in the like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he was conducting the business himself.

Further, all applicable provisions of the CGST Act and the rules made thereunder shall apply accordingly. Hence, the person or authority exercising such control would be required to undertake the applicable GST compliances in respect of the business, including registration, furnishing of returns, maintenance of accounts and records, and compliance with notices, orders and other communications issued by the GST authorities, as applicable.

10. SPECIAL PROVISIONS REGARDING LIABILITY TO PAY TAX, INTEREST OR PENALTY IN CERTAIN CASES (SECTION 93)

10.1 Statutory Provision

(1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), where a person, liable to pay tax, interest or penalty under this Act, dies, then—

(a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and

(b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

(2) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a Hindu Undivided Family or an association of persons and the

property of the Hindu Undivided Family or the association of persons is partitioned amongst the various members or groups of members, then, each member or group of members shall, jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person under this Act up to the time of the partition whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.

(3) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then, every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution.

(4) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), where a taxable person liable to pay tax, interest or penalty under this Act,—

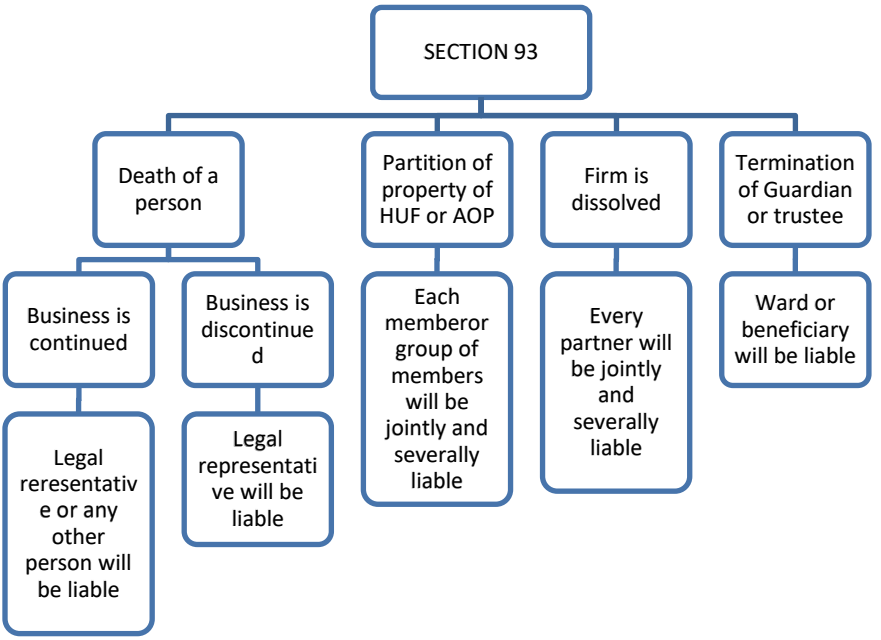
(a) is the guardian of a ward on whose behalf the business is carried on by the guardian; or

(b) is a trustee who carries on the business under a trust for a beneficiary,

then, if the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person up to the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

10.2 Analysis

This Section provides for liability in case of death of an individual or dissolution of a HUF or termination of guardianship or liability on dissolution of firm etc. The cases covered are as under:



Liability on death of the proprietor

Section 93(1) states that if any person liable to pay tax, interest or penalty under CGST Act dies, and,

- *If his business is continued after death*

  If the business carried on by the person is continued after his death by legal representative or any other person then such legal representative or other person will be liable to pay tax, interest or penalty due from such person.

- *If the business is discontinued after death*

  If the business carried on by the person is discontinued (whether before or after death) then his legal representative will be liable to pay tax, interest or penalty due from such person. The legal representative will make payment out of the estate of the deceased to the extent to which the estate is capable to meeting the liability. In such case, the liability has been limited to the recovery from the estate of the deceased.

A legal representative has been defined under Section 2 of the Code of Civil Procedure, 1908 as under-

> *(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;*

Thus, a legal representative can be defined as a person who has the authority to represent the estate of a deceased person in law and it also includes-

- A person who has the authority to handle the estate of the deceased person
- A person on whom the property of the deceased person is transferred after his death

As per *Circular No. 96/15/2019 GST dated 28.03.2019,* in case of transfer of business due to death of sole proprietor, the successor shall be liable to pay any tax, interest or penalty due from such transferor.

Liability on partition of HUF

Section 93(2) deals with the liability of Hindu Undivided Family or association of persons to pay tax, interest or penalty in case of partition of property. It states that if any Hindu Undivided Family or association of persons

- is a taxable person, and
- is liable to pay tax, and
- has partitioned the property amongst the various members or group of members,

then each member or group of members shall, jointly and severally, be liable to pay any tax, interest or penalty due from the Hindu Undivided Family or association of persons up to the time of the partition. It will not matter if such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.

Liability on dissolution of firm

Section 93(3) deals with the liability of the firm to pay tax, interest or penalty in case of dissolution. It states that where a firm

- is taxable person, and
- is liable to pay tax, and
- is dissolved

then every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm up to the time of dissolution. It will not matter if such tax, interest or penalty has been determined before the dissolution but has remained unpaid or is determined after dissolution.

Liability on termination of guardianship

Section 93(4) is about the liability to pay tax, interest or penalty where the taxable person:

- is the guardian of a ward on whose behalf the business is carried on by the guardian; or
- is a trustee who carries on the business under a trust for a beneficiary

In this situation if the guardianship or trust is terminated, the ward or the beneficiary will be liable to pay the tax, interest or penalty due from the taxable person up to the time of the termination of the guardianship or trust. It will not matter if such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

IBC to prevail over present Section

If there is anything contrary to section 93 in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), then the provisions of Insolvency and Bankruptcy Code, 2016 (31 of 2016) will prevail over this section.

10.3 Significant Judicial Pronouncements

1. Liability of Legal Representative for Tax Dues of Deceased Assessee

[Shri Hitesh Patel v. State of Rajasthan, 2026:RJ-JD:10428-DB (Rajasthan High Court, Jodhpur, 26 February 2026)]

The concerned GST Case law deals with a GST assessment order challenged by the son of a deceased assessee. The petitioner's father, a PWD contractor and sole proprietor of M/s Patel Enterprises, had his GST registration retrospectively cancelled in 2019. A show cause notice

under Section 74 was issued in May 2025 for FY 2021-22, but before any reply could be filed, the father was hospitalized and died on 10.06.2025. Despite this, an assessment order was passed on 10.07.2025 against the deceased without issuing any independent notice or hearing to the legal heir. The Court held that while Section 93 of the CGST Act permits recovery of tax dues from a deceased person's legal representative or estate, this is subject to compliance with Section 75(4) and 75(6), which mandate a personal hearing and a reasoned speaking order before any adverse decision. Since the petitioner was never afforded a hearing before the order was passed, the Court quashed the assessment order dated 10.07.2025, granting the department liberty to issue a fresh notice to the petitioner and pass a new order after due hearing — with any resulting liability to be recovered only from the deceased's estate under Section 93. The Court also directed status quo on the attached estate pending fresh proceedings.

2. Liability of Legal Heirs — SCN Must Be Issued to Legal Representatives of Deceased Taxpayer

[Gita Rani Pan v. Union of India, WPA 10402 of 2025 (Calcutta HC, 27 August 2026)]

This case is concerned with a Show Cause Notice under Section 74 of the CGST Act issued on 08.03.2022 in the name of Late Haradhan Pan, who had died on 20.05.2021, culminating in an Order in Original dated 21.01.2025 raising a demand of Rs. 38,44,674/- for FY 2017-18 to 2020-21. The petitioner (the deceased's widow) argued that proceedings against a dead person are void ab initio. Reliance was placed on precedents including *Sabina Abraham v. Collector of Central Excise* and *Arvind Traders v. State of U.P.*, while the CGST Authorities contended that Section 93(1)(b) fixes liability on legal heirs for tax dues even when determined after the assessee's death, and that the petitioner's delayed application for cancellation of the deceased's registration could not absolve this liability. The Court clarified that Section 93 of the CGST Act is merely a charging provision establishing that legal representatives are liable, out of the deceased's estate, for tax, interest, or penalty due from the deceased — whether determined before or after death but it is not a machinery provision for determining that liability; the actual assessment machinery remains Sections 73/74, which require a Show Cause Notice to be issued directly to the legal heirs in their own name

(describing them as legal representatives), not to the deceased with heirs merely directed to respond. Since the notice, order, and recovery proceedings had all run against the dead person without any notice to the legal heirs, the Court quashed the Show Cause Notice, the Order in Original, and the recovery notice, and directed the department to issue a fresh Show Cause Notice in the name of legal heirs within three weeks, followed by replies, a personal hearing, and a reasoned order with recovery, per Section 93(1)(b), limited to the extent the deceased's estate is capable of meeting the charge.

3. Recovery of Deceased Taxpayer's GST Dues from Heir Impermissible Without Establishing Succession and Liability Under Section 93

[Navin Vishwanathan v. State of Maharashtra, W.P. No. 8709 of 2025, decided on 15-04-2026 (Bom. HC)]

The GST Case law involves a challenge to the attachment of the petitioner's personal bank account under Section 79(1)(c) read with Section 93(1)(a) of the CGST Act, for recovery of Rs. 4,15,54,508/- allegedly due from his deceased father's proprietorship, M/s. Oriental Facility. The petitioner held a separate, independent GST registration for his own proprietorship operating with the similar trade name "Oriental Facility". with a distinct place of business and contended that the mere similarity of trade name could not justify fastening his deceased father's tax liability onto him without any determination under Section 93. The Department argued that since the petitioner carried on business under the same name and had earlier been associated with his father's concern, he ought to be treated as continuing that business and thus liable under Section 93(1)(a). The Court held that Section 93 is not a self-executing charging provision that permits automatic recovery merely on the basis of a similar trade name or presumed continuity — it lays down substantive conditions (under clause (a), liability where the legal representative or another person continues the deceased's business; under clause (b), liability limited to the deceased's estate where the business is discontinued) that must be established through a proper adjudicatory process involving notice and hearing before recovery can be initiated, since both proprietorships held separate GSTINs and were independent taxable persons under the GST regime. Since no show cause notice or opportunity of hearing was

granted to the petitioner before invoking Sections 79 and 93 to freeze his account, and since recovery under Section 79 presupposes an already-established liability rather than a presumed one, the Court found the attachment to be a jurisdictional error and a violation of natural justice and Article 300A, quashed the DRC-13 communication, and directed release of the bank account , while leaving it open to the Department to independently determine, through due process, whether the petitioner is in fact liable under Section 93 for his deceased father's dues.

Comparative Overview of Sections 91, 92 and 93

Although Sections 91, 92 and 93 all seek to protect the Revenue where the person originally liable for tax is not in a position to discharge the liability in the ordinary manner, their underlying mechanisms are different. Section 91 is liquidation-oriented and focuses on the liquidator and the assets of the company; Section 92 is director-oriented and creates a statutory/vicarious liability in specified circumstances whereas Section 93 is succession/estate-oriented and determines the person responsible for tax dues following death, dissolution or winding-up. These provisions should therefore be read as distinct statutory mechanisms rather than as overlapping provisions dealing with the same form of liability.

Interplay of Sections 85 and 93 in case of death of a sole proprietor

In the case of death of a sole proprietor, the liability arising in respect of the business does not cease merely on account of the death of the proprietor. Section 85 of the CGST Act provides for the liability of a taxable person in certain circumstances where the business is transferred, including the liability of the transferor and transferee in respect of tax, interest or penalty due under the Act. This provision needs to be read along with Section 93, which specifically deals with the liability of the legal representative in cases where the taxable person dies. Thus, where the business of a deceased sole proprietor is continued or otherwise devolves upon the legal representative, the provisions of Section 93 determine the extent of liability of the legal representative, while Section 85 may become relevant where there is a transfer of the business. Accordingly, the legal position relating to the death of a sole proprietor should be examined with reference to the interplay between Sections 85 and 93, read with the applicable provisions of the CGST Act and *Circular No. 96/15/2019-GST dated 28 March 2019*.

11. LIABILITY IN OTHER CASES (SECTION 94)

11.1 Statutory Provision

(1) Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business—

(a) the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and

(b) every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.

(2) Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, as it existed before and as it exists after the reconstitution, shall, without prejudice to the provisions of section 90, jointly and severally, be liable to pay tax, interest or penalty due from such firm or association for any period before its reconstitution.

(3) The provisions of sub-section (1) shall, so far as may be, apply where the taxable person, being a firm or association of persons is dissolved or where the taxable person, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or to partition.

Explanation.—For the purposes of this Chapter,—

(i) a "Limited Liability Partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008 (6 of 2009) shall also be considered as a firm;

(ii) "court" means the District Court, High Court or Supreme Court.

11.2 Analysis

Section 94(1) will be operative where a taxable person is

- a firm
- association of persons
- Hindu Undivided Family

} and has discontinued business

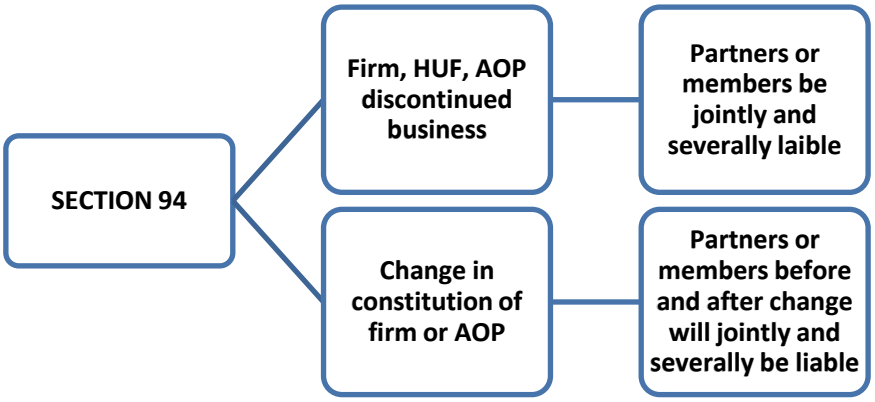
The tax, interest or penalty payable under CGST Act by such firm, association or family will be determined as if no discontinuance has taken place. Every person who was a partner or member will jointly and severally liable be for payment of such tax, interest or penalty whether imposed before or after discontinuance. Also, such partner or member will be deemed to be a taxable person himself. According to section 94(3) discontinuation of business in section 94(1) would mean:

- Dissolution in case of firm and AOP
- Partition in case of Hindi Undivided Family

Section 94(2) deals with the case when a there is change in constitution of a firm or association of persons (AOP). Some examples of change in constitution are:

- Change in profit-sharing ratio
- Admission of new partner or partners
- Retirement of partners
- Amalgamation of two or more firms
- Conversion of partnership firm into sole proprietary or vice-versa
- Conversion of firm into a company, etc.

Whenever there is a change in constitution of firm or AOP, the members or partners before the constitution as well as after the constitution will be liable to pay the tax, interest or penalty due for any period before the reconstitution. But if any partner retires from the firm, then the provisions of section 90 will override this section.



For the purposes of Chapter XVI (Sections 85 to 94) of the CGST Act

- a "Limited Liability Partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008 will also be considered as a firm
- "court" would mean the District Court, High Court or Supreme Court.

11.3 Significant Judicial Pronouncement

Recovery of Tax Dues from Members of a Registered Society Not Permissible as Society Is Not an 'Association of Persons' under Section 94

[Gunnuru Satya Rama Murthy v. Assistant Commissioner (ST), W.P. No. 17714 of 2023 (A.P. High Court, decided on 04.12.2024)]

This case focuses on recovery of GST dues of Rs. 2.04 crores from the petitioner, who had served as Secretary of Sri Sampath Vinayaka Non-Government Employees Welfare Society, a Society registered under the Andhra Pradesh Societies Registration Act, 2001. The tax authorities had attached the petitioner's personal agricultural land and house (which he sought to mortgage for his daughters' college fees) by invoking Section 94 of the CGST/SGST Act, which allows recovery of a discontinued firm's, association of persons', or Hindu Undivided Family's dues jointly and severally from its partners/members, treating the Society as an "association of persons." The Court examined Section 2(84) of the CGST Act, which separately lists "association of persons or body of individuals" under clause (f) and "society as

defined under the Societies Registration Act, 1860" under clause (l), and held that this distinction shows the legislature treated the two as separate categories. Since the Society in question satisfied all the essential characteristics of a society under the 1860 Act (as the 2001 Andhra Pradesh Act's registration conditions were in *pari materia* with it and expressly excluded firms or unincorporated associations from becoming members), it could not be equated with an "association of persons" for the purposes of Section 94(1). Consequently, the Court held that Section 94 could not be invoked to fasten the Society's tax liability jointly and severally on the petitioner merely because he was its Secretary/member and allowed the writ petition, quashing the Form GST DRC-16 attachment, the related communication to the Sub-Registrar, and the recovery endorsement against the petitioner's property.

Statutory Mechanism for Proceeding Against Persons Liable under Chapter XVI

- **Notice and Adjudication Sequence:** The liability created under Chapter XVI should be distinguished from the **procedure for determination of tax and recovery** under the CGST Act. The relevant provision of Chapter XVI first identifies the person who is liable in the specified circumstances—for example, a transferee, agent, director, partner, liquidator or legal representative. The Department should thereafter determine the underlying tax, interest or penalty liability in accordance with the applicable provisions of Chapter XV. Where a tax demand is required to be adjudicated, the proper officer should issue a **show cause notice to the person against whom the liability is proposed to be enforced**, clearly setting out the underlying tax liability as well as the statutory basis under Chapter XVI for fastening such liability. The person should be afforded an opportunity to submit a reply and to be heard and the proper officer should thereafter pass a reasoned order determining the liability in accordance with the applicable provisions of the Act. For periods up to FY 2023-24, Sections 73 or 74 would apply depending upon the nature of the case, while Section 74A applies for FY 2024-25 onwards.
- The sequence may therefore be understood as:

  (1) identify the underlying tax liability;

(2) identify the person on whom liability is fastened under the relevant provision of Chapter XVI;

(3) issue the appropriate notice to that person, setting out both the demand and the statutory basis of liability;

(4) consider the reply and provide an opportunity of hearing;

(5) pass the adjudication order determining the liability; and

(6) if the amount remains unpaid, initiate recovery under Sections 78 and 79.

Thus, Chapter XVI should not be treated as authorising an automatic recovery against the person specified therein. Rather, Chapter XVI supplies the substantive basis for fastening liability, while the provisions governing determination and recovery supply the procedural machinery for enforcing that liability. This distinction is particularly important where the person sought to be made liable is not the original taxable person.

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